

**Federal Defenders  
OF NEW YORK, INC.**

Southern District  
52 Duane Street-10th Floor, New York, NY 10007  
Tel: (212) 417-8700 Fax: (212) 571-0392

David E. Patton  
*Executive Director*

*Southern District of New York*  
Jennifer L. Brown  
*Attorney-in-Charge*

February 27, 2023

By ECF

Honorable Gregory H. Woods  
United States District Judge  
Southern District of New York  
500 Pearl Street, Room 2260  
New York, New York 10007

**Re: *United States v. Ethan Phelan Melzer*, S1 20 Cr. 314 (GHW)**

Dear Judge Woods:

As counsel to Ethan Melzer, we write in response to the Court's order at ECF No. 162. Our position is that the Court should rule on the factual objections to the PSR set forth in our letter at ECF No. 161. As the Court has observed, "the Government bases a number of arguments in its sentencing submission on facts" that Mr. Melzer disputes, primarily those concerning when he began following O9A and which aspects of his conduct, including his decision to enlist in the military, were in furtherance of O9A's beliefs. ECF No. 160 at 1; *see also* ECF No. 162 at 1. Resolution of those disputes is thus likely to "affect sentencing," Fed. R. Crim. P. 32(i)(3)(B), even if the Court's ruling in Mr. Melzer's favor would not cause the Government to seek a different sentence, *see* Gov't Letr. at 1 (ECF No. 163).

If invited to present evidence on these issues, we intend to submit a packet of approximately 20 pages of exhibits, including excerpts of Mr. Melzer's chats from the messaging application Discord and a declaration from Mr. Melzer.<sup>1</sup> We believe that this evidence compels the conclusion that, contrary to the PSR's and the Government's contentions, Mr. Melzer did not begin following O9A until early 2019 and so could not have (a) performed "insight roles" on

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<sup>1</sup> We do not intend to elicit witness testimony and so do not anticipate requesting a *Fatico* hearing, assuming the Court accepts our evidentiary submission.

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behalf of O9A prior to 2019 or (b) enlisted in the Army in 2018 in furtherance of O9A's objectives. We would be prepared to submit that packet by February 28.<sup>2</sup>

Respectfully submitted,

/s/ Jonathan Marvinny

Jonathan Marvinny

Ariel Werner

Assistant Federal Defenders

212.417.8792

[jonathan\\_marvinny@fd.org](mailto:jonathan_marvinny@fd.org)

cc: Government counsel

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<sup>2</sup> In light of the Government's agreeing to remove references to Shooting-2 from the PSR, ECF No. 163 at 1–2, Mr. Melzer's objections to those references are moot.